

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

DAVID WHITT,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 18-cv-1294
	)	
CITY OF ST. LOUIS, et al.,	)	JURY TRIAL DEMANDED
	)	
Defendants.	)	

**PLAINTIFF’S MOTION FOR LEAVE TO FILE  
FIRST AMENDED COMPLAINT OUT OF TIME**

COMES NOW Plaintiff David Whitt, by his undersigned attorneys, and, pursuant to Fed. R. Civ. P. 15(a)(2) and E.D.Mo. L.R. 1.05 and 4.01, moves for leave to amend his complaint out of time. In support, Plaintiff states as follows:

1. Plaintiff initiated this case on August 7, 2018. The various individual defendants filed several motions to dismiss, and Plaintiff’s responses to those motions were due September 25, 2018. *See* Doc. #18 and 32.

2. Counsel intended to file an amended complaint on September 25 as of right, pursuant to Fed. R. Civ. P. 15(a)(1)(B), addressing the alleged pleading issues argued in defendants’ dispositive motions.

3. Due to an inadvertent scheduling error and oversight on Plaintiff’s counsel’s part, counsel failed to file the amended complaint yesterday.

4. Leave to amend a complaint should be “freely given when justice so requires.” FED. R. CIV. P. 15(a)(2); *see Foman v. Davis*, 371 U.S. 178, 182 (1962) (“Rule 15(a) declares that leave to amend ‘shall be freely given when justice so requires’; this mandate is to be heeded.”); *Fuller v. Sec’y of Def. of U.S.*, 30 F.3d 86, 88 (8th Cir. 1994) (“Leave to amend should be granted absent

a good reason for the denial, such as undue delay, bad faith, undue prejudice to the nonmoving party, or futility.”).

5. Plaintiff’s counsel’s failure to meet the September 25 deadline was completely inadvertent, and not intended to delay these proceedings or prejudice the defendants in any way.

6. This motion is made in good faith and not for purposes of delay. No party will be unduly prejudiced by the granting of this motion, and Plaintiff’s amendment of the initial complaint would not be futile.

7. Plaintiff’s counsel contacted Defendants’ counsel via telephone and email to request consent in this motion, and provided a copy of the Proposed First Amended Complaint, but did not receive a response from Defendants’ counsel in advance of filing this motion.

8. The Proposed First Amended Complaint is attached hereto as **Exhibit 1**.

9. In compliance with E.D.Mo. L.R. 4.01, Mr. Whitt has filed a memorandum in support of this motion contemporaneously herewith and incorporates the same by reference.

WHEREFORE, for the foregoing reasons, Plaintiff respectfully requests that this Court grant him leave to file *instanter* the First Amended Complaint attached hereto, and grant such other relief as is just and appropriate.

Date: September 26, 2018

Respectfully submitted,

By: /s/ Amy E. Breihan  
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**CERTIFICATE OF SERVICE**

I certify that on this 26th day of September, 2018, I filed a copy of the foregoing using the court's CMF/ECF system, which will provide service of the same on all counsel of record.

By: /s/ Amy E. Breihan